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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC - 6 P 5 02

December 1, 2006

VIA FACSIMILE (602-694-1650) AND MAIL

Jeff S. Jordan
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5840

Dear Mr. Jordan

This letter is in response to your letter dated October 17, 2006, in reference to Ellen Simon and the Ellen Simon for Congress campaign (collectively the "campaign"), reference number MUR 5840

The complaint submitted by the Arizona Republican Party alleges that Ms. Simon violated federal election law by initially reporting a loan as a personal contribution on her campaign finance report; by filing campaign finance reports without employer and occupation designations for all contributions, and by failing to file a \$5,000 threshold statement. The allegations outlined in the Arizona Republican Party's complaint mirror issues raised in a letter from the FEC to the campaign dated September 19, 2006, which I have attached for your reference.

The campaign responded to the FEC letter by filing an amended campaign finance report on October 8, 2006. In that amended report, the campaign addressed all of the concerns raised in the FEC letter. Although the campaign originally reported a loan as a personal contribution from Ms. Simon, the campaign amended its campaign finance report, designating that amount as a loan. The error by the campaign was inadvertent and it was properly remedied. Furthermore, in its October 8, 2006, amended report, the campaign explained that no jointly held assets were used to secure the loan, and thus it was not a contribution from Ms. Simon's spouse. The campaign has cooperated with the FEC and provided all of the information that it sought, allowing the public to fully understand the campaign's finances.

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Jeff S Jordan
December 1, 2006
Page 2

The Arizona Republican Party's complaint claims that the campaign has not provided evidence of its efforts to obtain employer and occupation information for some of its contributors. However, in its October 8, 2006, amended report, the campaign provided additional information for its contributors and carefully explained how it has attempted to obtain that information. The campaign follows a procedure to gather that information: (1) the original solicitation for fundraising includes contribution cards that asked donors to provide the required information and explains that federal law requires that they provide the information, (2) at fundraising events, contributors were asked to fill out those cards, (3) campaign staff contacted donors by phone to obtain any missing information; and (4) every thirty days, the campaign sent a follow-up letter to contributors who had not provided the required information, including a pre-addressed stamped return envelope and form that asked for the missing information. Once the campaign received the missing information, it reported that information on the next regular campaign finance report, or filed an amended report, depending on when the campaign received the new information. In its amended October 8, 2006, report, the campaign included the employer and occupation information it had received since the original report was filed.

Finally, the Arizona Republican Party's complaint expresses concern that the campaign did not file a \$5,000 threshold report and instead reported its contributions and expenditures in its regular quarterly campaign finance report. The campaign filed its statement of candidacy on May 1, 2006, and therefore was not required to file an additional form notifying the FEC when it reached \$5,000 in contributions or expenditures.

The campaign regrets any errors in its campaign finance reports, but any such errors were inadvertent and as noted above, when an error was brought to the campaign's attention, the campaign made every effort to quickly remedy it. Accordingly, I request that the FEC take no further action against the campaign. Please contact me if I can offer any further clarification. Thank you for your assistance in this matter.

Sincerely,



Charles A. Blanchard

CAB hdl
Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

RQ-2

September 19, 2006

Carter Olson, Treasurer
Ellen Simon for Congress
P O. Box 20435
Sedona, AZ 86341

Response Due Date:
October 28, 2006

Identification Number: C00423897

Reference: 12 Day Pre-Primary Report (7/1/06 - 8/23/06)

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. An adequate response must be received at the Commission by the response date noted above. An itemization of the information needed follows:

-Schedule A of your report discloses one or more contributions that appear to exceed the limits set forth in the Act. An individual, including a candidate's spouse, may not make contributions to a candidate for federal office in excess of \$2,100 per election. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. (2 U.S.C. § 441a(a) and (f); 11 CFR § 100.52)

While it is permissible for a candidate to obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan, the value of the candidate's share of the property must equal or exceed the amount of the loan. If the value of the candidate's share of the property is less than the amount of the loan, the difference between the amount of the loan and the value of the candidate's share of the property is considered a contribution from the candidate's spouse. This amount cannot exceed the limits for contributions from individuals (11 CFR § 100.52 (a)(3) and (4))

If any apparently excessive contribution in question was incompletely or incorrectly reported, you must amend your original report with the clarifying information.

Ellen Simon for Congress
Page 2 of 3

Alternatively, the funds can be retained if within sixty (60) days of receipt, the excessive amount was properly designated for a different election. An excessive contribution is considered properly redesignated if (1) the committee obtains signed written documentation from the contributor(s) authorizing the redesignation of the contribution for another election, provided that the new designation does not exceed the limitations on contributions made with respect to that election, or (2) the committee redesignates, by presumption, the excessive portion of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election. In this case, the treasurer must notify the contributor of the redesignation in writing within 60 days of the treasurer's receipt of the contribution. The notification must give the contributor an opportunity to request a refund (11 CFR § 110.1(b)(5)(ii)(B))

A contribution can only be redesignated to a previous election to the extent that the contribution does not exceed the committee's net debts outstanding for that election. (11 CFR § 110.1(b)(3)(i))

If the foregoing conditions for redesignations are not met within 60 days of receipt, the excessive amount must be refunded. (11 CFR § 103.3(b)(1))

Please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks, and/ or letters redesignating the contributions in question. Refunds are reported on Line 20 of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. Redesignations are reported as memo entries on Schedule A of the report covering the period in which the authorization for the redesignation is received. (11 CFR § 104.8(d)(2), (3) and (4))

The acceptance of excessive contributions is a serious problem. Again, the committee's procedures for processing contributions should be examined and corrected in order to avoid this problem. Although the Commission may take further legal action, prompt action by you to refund or redesignate the excessive amount will be taken into consideration.

-Your committee's FEC FORM 10 received 8/27/06 appears to have been filed outside of the deadline. For future filings, please be advised that Commission Regulations require the candidate's Principal Campaign Committee to notify within twenty-four (24) hours the Commission, each opposing candidate, and the national party of each opposing candidate when a candidate makes expenditures from personal funds in connection with an election that causes his or her aggregate expenditures from personal

Ellen Simon for Congress
Page 3 of 3

funds to exceed the \$350,000 threshold. If however the expenditures from the candidate's personal funds have been reported incorrectly, please correct this discrepancy by amending the report. (11 CFR §§ 400.21(b) and 400.22(b))

-Your committee has previously established that it has been using "best efforts" to obtain the occupations and names of employers for contributors. This report discloses a significant increase in the number of entries for which the occupations and/or employers are not provided. Please note that the committee must make, in addition to the original solicitation, at least one additional written or oral request for the information within 30 days of the receipt of the contribution. A written request may not include an additional solicitation or material on any other subject, other than thanking the contributor for the contribution and must include a pre-addressed post card or envelope for the contributor's response. An oral request must be documented in writing (11 CFR §§ 104.3(a)(4)(i) and 104.7)

Please note you will not receive an additional notice from the Commission on this matter. Adequate responses received on or before this date will be taken into consideration in determining whether audit action will be initiated. Requests for extensions of time in which to respond will not be considered. Failure to provide an adequate response by this date may result in an audit of the committee. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action.

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended. If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1175.

Sincerely,



Travis F. Brown
Campaign Finance Analyst
Reports Analysis Division

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